

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #15	CCRB Case #: 201702667	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/01/2017 7:00 PM	Location of Incident: East 149th Street between Wales Avenue and Tinton Avenue	Precinct: 40	18 Mo. SOL 10/1/2018	EO SOL 10/1/2018	
Date/Time CV Reported Sun, 04/02/2017 10:57 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/06/2017 11:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Cabrera	26123	948314	040 PCT
2. POM Coty Green	14012	949057	040 PCT
3. POF Doreyda Munoz	17104	952039	040 PCT
4. SGT Brian Ramirez	01750	937327	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Cabrera	Abuse: Police Officer Juan Cabrera stopped § 87(2)(b)	
B.POM Juan Cabrera	Abuse: Police Officer Juan Cabrera questioned § 87(2)(b)	
C.POM Juan Cabrera	Abuse: Police Officer Juan Cabrera frisked § 87(2)(b)	
D.POM Juan Cabrera	Abuse: Police Officer Juan Cabrera refused to provide his name and shield number to § 87(2)(b)	
E.SGT Brian Ramirez	Abuse: Sergeant Brian Ramirez refused to provide his name and shield number to § 87(2)(b)	
F.POM Coty Green	Abuse: Police Officer Coty Green refused to provide his name and shield number to § 87(2)(b)	
G.POF Doreyda Munoz	Abuse: Police Officer Doreyda Munoz refused to provide her name and shield number to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

On April 2, 2017, § 87(2)(b) called the NYPD IAB Command Center and filed this complaint. Original Log #17-12112 was generated and it was received at the CCRB on April 6, 2017.

Video footage was not located for this incident. On April 19, 2017, fieldwork was conducted in the vicinity of 778 East 149<sup>th</sup> Street in the Bronx. The manager of the Somosa Grocery, located at the previously stated address, allowed investigators to view the video footage from exterior cameras. It was discovered that footage dating to April 1, 2017 had been deleted. The business next door, Multi Service, was also visited however it was learned that exterior cameras were disconnected.

- § 87(2)(b) rejected mediation during his sworn statement, § 87(2)(b)
- FOIL requests for notices of claim were filed with the Office of the New York City Comptroller on April 21, 2017 and June 1, 2017. The result of each inquiry indicates that no notices of claim have been filed in regards to this incident (BR 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- § 87(2)(b) has one prior complaint with the CCRB, which resulted in no substantiated allegations (BR 03).
- During his seven year tenure, PO Cabrera has been the subject of 19 prior CCRB allegations involving eight cases. In CCRB case #201302335, the following allegations were substantiated, Abuse of Authority-Vehicle Search, Discourtesy-Word, Abuse Authority-Frisk, and Abuse of Authority-Stop. For each of these substantiated allegations, the Board Recommended Charges. NYPD came to a guilty disposition and he

forfeited ten vacation days for the substantiated vehicle search as well as the discourteous word.

- During her five year tenure, PO Munoz has been the subject of nine prior CCRB allegations over three cases. Two of these cases resulted in substantiated allegations. In CCRB case #201600334 allegations of Abuse of Authority-Retaliatory Summons and Abuse of Authority-Frisk were substantiated. In addition, PO Munoz was cited § 87(4-b) § 87(2)(g) providing a false official statement. For each substantiated allegation, the Board recommended Formalized Training and the NYPD disposition was Instructions. In CCRB case # 201502876, allegations of Abuse Authority-Stop and Abuse of Authority-Search of person were substantiated. For each the Board recommended Command Discipline B. As of the date of this report, the NYPD has not issued its disposition.
- During his 12 year tenure, Sgt. Ramirez has been the subject of 13 prior CCRB allegations over nine cases. Two of these cases resulted in substantiated allegations. In CCRB case #201506894, an allegation of Abuse of Authority- Refusal to Obtain Medical Treatment was substantiated. For this substantiated allegation, the Board recommended Command Discipline A. As of the date of this report, the NYPD has yet to issue its disposition. In CCRB case #201600638, an allegation of Abuse of Authority- Retaliatory Summons was substantiated. For this substantiated allegation, the Board recommended Formalized Training and the NYPD concurred with the recommendation.
- During his six year tenure, PO Green has been the subject of 11 prior CCRB allegations over five cases. Two of these cases have resulted in substantiated allegations. In CCRB case #201200857, an allegation of Abuse of Authority- Stop was substantiated. For this substantiated allegation, the Board recommended charges. NYPD found him not guilty and issued no penalty. In CCRB case #201600638, an allegation of Abuse of Authority- Search of Person was substantiated. For this substantiated allegation, the Board recommended Formalized Training and the NYPD concurred with that recommendation.

### **Findings and Recommendations**

#### **Allegations not pleaded**

- § 87(2)(g) [REDACTED]

**Allegation A –Abuse: Police Officer Juan Cabrera stopped** § 87(2)(b)

**Allegation B –Abuse: Police Officer Juan Cabrera questioned** § 87(2)(b)

**Allegation C –Abuse: Police Officer Juan Cabrera frisked** § 87(2)(b)

It is undisputed that PO Cabrera stopped, questioned, and frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b) testified that he was walking alone along East 149<sup>th</sup> Street between Wales Avenue and Tinton Avenue in the Bronx. § 87(2)(b) was speaking on the phone and was carrying his umbrella in his hand. He had come from his barber shop, located on East 149<sup>th</sup> Street and

Southern Boulevard and was walking to a subway station. He had been walking for approximately 15 minutes, during which time he did not stop anywhere or speak with anyone. § 87(2)(b) testified that he had nothing in either his vest pockets, or his sweatshirt pocket. He stated that he had his keys and wallet in the rear pocket of his sweatpants. After crossing Wales Avenue, PO Cabrera approached from behind § 87(2)(b) and grabbed the back of § 87(2)(b)'s vest. § 87(2)(b) stated, "Get off of me, why are you touching me?" PO Cabrera responded, "Do you have any weapons?" § 87(2)(b) stated that he did not have to answer that question and PO Cabrera asked the same question a second time. § 87(2)(b) then asked PO Cabrera whether he had received any complaint of him having a weapon. PO Cabrera did not respond. § 87(2)(b) turned to face PO Cabrera and PO Cabrera grabbed the front of § 87(2)(b)'s vest. Three additional officers then surrounded § 87(2)(b). He was asked for identification; however he refused to provide it. The officers then left to return to their vehicle (BR 04).

PO Cabrera testified that while travelling in an unmarked police vehicle, PO Green—who was driving the vehicle—articulated that he had just observed § 87(2)(b) following an unidentified female. After the vehicle was driven once around the block, they again passed by § 87(2)(b) approximately one minute after the initial observation. PO Cabrera observed § 87(2)(b) walking approximately five feet behind an unidentified female. § 87(2)(b) was holding the right side of his vest, near his hip, with his right hand. Under § 87(2)(b)'s right hand, PO Cabrera observed a bulge. PO Cabrera described the bulge as approximately the size of § 87(2)(b)'s hand. He couldn't describe its shape. PO Cabrera testified that he made this initial observation from approximately one car's length away. He stated that he believed it was possible that the bulge was a gun. PO Cabrera testified that there was a conversation in the vehicle regarding the officers' observations, however he couldn't recall the content of that conversation. As he was observing § 87(2)(b) walking behind the female, both § 87(2)(b) and the female stopped at the corner of East 149<sup>th</sup> Street and Tinton Avenue. § 87(2)(b) remained approximately five feet behind the female. After they drove past § 87(2)(b)'s location, the officers made a U-turn and drove towards § 87(2)(b). § 87(2)(b) then looked at their vehicle and began walking in the opposite direction. The officers made another U-turn and § 87(2)(b) again reversed direction. The officers then made a final U-turn and began driving towards § 87(2)(b). As they drove towards him, PO Cabrera observed § 87(2)(b) shift the bulge to the left side of his vest still around his hip area. He switched his umbrella into his right hand and kept his left hand on the bulge. Once PO Green stopped the vehicle, PO Cabrera exited and stated, "Police, stop." § 87(2)(b) continued to walk and asked, "Am I being detained?" PO Cabrera stated to § 87(2)(b) that he was being detained (BR 05).

PO Cabrera testified that it was his decision to stop § 87(2)(b). He couldn't recall a specific conversation prior to stopping § 87(2)(b) regarding whether or not to stop him. PO Cabrera testified that he stopped § 87(2)(b) because of the bulge he observed, § 87(2)(b)'s movements of the bulge, and § 87(2)(b)'s allegedly evasive walking.

After PO Cabrera exited the vehicle, § 87(2)(b) continued to walk away from the officer, despite PO Cabrera's instructions to stop. § 87(2)(b) then slid the bulge up towards his left armpit. As he did, § 87(2)(b) stated "I don't got shit. What the fuck do you want?" PO Cabrera jogged to catch up to § 87(2)(b). As he passed him PO Cabrera asked § 87(2)(b) "do you

have any weapons on you?” § 87(2)(b) responded that he did not. PO Cabrera then reached out and grabbed the bulge, which was located near § 87(2)(b)'s left armpit. PO Cabrera testified that the bulge felt like crumpled papers. As PO Cabrera grabbed the bulge, § 87(2)(b) unzipped his jacket revealing a folded manila envelope that appeared to contain papers. PO Cabrera stated that this appeared to be the cause of the bulge. PO Cabrera testified that other than grabbing the bulge, he made no other physical contact with § 87(2)(b).

Sgt. Ramirez testified that after PO Green relayed his observation of § 87(2)(b) walking behind an unidentified female, Sgt. Ramirez also observed § 87(2)(b) walking approximately five feet behind the female. He believed that § 87(2)(b) was following the female. § 87(2)(b) was also holding the front of his waist with one of his hands. While Sgt. Ramirez was observing § 87(2)(b) walking, § 87(2)(b) switched the hand that was holding the front of his waist approximately three times. As they were driving past § 87(2)(b) he observed the vehicle and turned to walk in the opposite direction. The officers made a U-turn and § 87(2)(b) again reversed course. Sgt. Ramirez testified that § 87(2)(b)'s actions were consistent with robbery patterns, citing his training and experience. The officers then approached in their vehicle. PO Cabrera was the first to exit the vehicle and made contact with § 87(2)(b). Sgt. Ramirez then exited the vehicle and approached as § 87(2)(b) continued to walk. As he exited the vehicle, Sgt. Ramirez observed a bulge on the front middle of § 87(2)(b)'s torso. It was approximately two inches wide and eight inches long. It ran down towards § 87(2)(b)'s waist. Sgt. Ramirez testified that he believe it may have been a weapon because § 87(2)(b) was holding the front of his waistband which is commonly where weapons are concealed. As he continued to walk with § 87(2)(b) PO Cabrera asked if he had anything in his jacket and patted the area. The frisk lasted approximately one second. § 87(2)(b) then unzipped his jacket revealing a folded manila envelope (BR 06).

PO Munoz testified that her attention was brought to § 87(2)(b) by another officer as § 87(2)(b) was walking a few feet behind a female along 149<sup>th</sup> Street. PO Munoz observed him shifting his hands back and forth in a pocket on the front of § 87(2)(b)'s outerwear. PO Munoz testified that she believed it was possible that he was about to commit a violent crime. She stated that she believed this because of the nature of the precinct—which she described as violent—as well as § 87(2)(b)'s proximity behind the female, and her observations of his shifting hands within his pocket. PO Munoz also observed a bulge near the front waist of his outerwear, where § 87(2)(b)'s hands were. She stated that it was small but could not be more specific regarding its size. She also could not recall its shape. PO Munoz stated that she believed it was possible it was a weapon because of the same reasons she cited prior for believing that he may have been about to commit a violent crime. After exiting and approaching § 87(2)(b) she testified that he refused to stop walking. When § 87(2)(b) eventually did stop walking an officer patted down § 87(2)(b)'s waist area, however PO Munoz couldn't recall if it was the front or back that was patted down. PO Munoz was never made aware of what caused the bulge she observed (BR 07).

PO Green testified that an officer, not himself, had relayed observing § 87(2)(b) following an unidentified female. PO Green made a U-turn and then observed § 87(2)(b) walking behind the female. Other than observing § 87(2)(b) walking behind the female, PO Green testified that he didn't make any additional observations at this time. PO Green described the area as a high cell phone snatching area, citing an incident of this that had occurred the week prior to this incident.

PO Green stated that this condition was not mentioned prior to § 87(2)(b) being stopped. PO Green testified that other than the information relayed to him, he did not make any observations or hear any additional observations. After approaching § 87(2)(b)'s location in the vehicle, PO Cabrera, PO Munoz, and Sgt. Ramirez exited the vehicle. PO Cabrera made first contact with § 87(2)(b). PO Green drove alongside them as § 87(2)(b) continued to walk. PO Green testified that he observed a bulge on § 87(2)(b)'s person once he stopped the vehicle. He stated that it extended approximately two inches out from his stomach. He couldn't recall how tall or wide it was. He also couldn't describe its shape. He expanded that it looked like a person's stomach extending out. He testified that he believed it could have been a blunt object, due to the way it was extending out from his waist. PO Green testified that the bulge did not look like a gun. PO Green was asked if there was a reason why, if it looked like a stomach protruding, he didn't think it was this and he stated no. As he was driving, PO Green heard PO Cabrera ask § 87(2)(b) what he had in his jacket and § 87(2)(b) did not answer. PO Cabrera then reached out as they walked and touched the area where the bulge was located. He then stated that there was nothing there and pulled his hand back. § 87(2)(b) then pulled out a manila envelope from underneath his jacket (BR 08).

Sgt. Ramirez, PO Munoz, and PO Green all testified that there was no discussion regarding whether or not to stop or frisk § 87(2)(b).

A Stop, Question, and Frisk Report was filled out by PO Cabrera regarding this incident. It stated that the factors that led to the stop were "Concealing or Possessing a Weapon." The narrative also describes § 87(2)(b) as seeming to be securing an object on his left side. The area was frisked and it was discovered that the bulge was created by a folded manila folder (BR 09).

"Before a police officer may stop and frisk a person, he must have 'reasonable suspicion' that such person is committing, has committed or is about to commit a crime. We have defined reasonable suspicion as 'the quantum of knowledge to induce an ordinarily prudent and cautious man under the circumstances to believe criminal activity is at hand. It may not rest on equivocal or 'innocuous behavior' that is susceptible of an innocent as well as a culpable interpretation.'" People v. Brannon, 16 N.Y.3d 596 (BR 10). A frisk requires reasonable suspicion that an individual is in possession of a weapon. People v. DeBour, 40 N.Y.2d 210 (BR 11). "Where a person approached from the content of the officer's questions might reasonably believe that he or she is suspected of some wrongdoing, the officer is no longer merely asking for information. The encounter has become a common-law inquiry that must be supported by founded suspicion that criminality is afoot." New York v. Hollman, 79 N.Y.2d 181 (BR 12).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

**Allegation D –Abuse: Police Officer Juan Cabrera refused to provide his name and shield number to § 87(2)(b)**

**Allegation E –Abuse: Sergeant Brian Ramirez refused to provide his name and shield number to § 87(2)(b)**

**Allegation F –Abuse: Police Officer Coty Green refused to provide his name and shield number to § 87(2)(b)**

**Allegation G –Abuse: Police Officer Doreyda Munoz refused to provide her name and shield number to § 87(2)(b)**

§ 87(2)(b) alleged that PO Cabrera, Sgt. Ramirez, PO Green, and PO Munoz all failed to provide their name and shield number upon request.

§ 87(2)(b) testified that, as the officers were returning towards their vehicle, he stated, “let me get your shields, your commands, and your names.” When he made this statement, § 87(2)(b) was located directly in front of the officers’ vehicle. The officers were in the process of getting into the vehicle, but were not yet inside. None of the officers said anything in response to the request. § 87(2)(b) testified that he was certain they had heard him because of their proximity (BR 04).

All four officers denied hearing § 87(2)(b) request any of their information. They also denied refusing to provide that information. PO Green and PO Cabrera both testified that they had offered § 87(2)(b) their contact card. § 87(2)(b) refused to take the cards and cursed at the officers. He then walked away. The above referenced Stop, Question, and Frisk report stated that § 87(2)(b) was offered a contact card, which he refused to take ( BR 05, 06, 07, 08, 09).

§ 87(2)(g)  
[REDACTED]

§ 87(4-b) § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

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Squad: 15

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date